ent considerations may arise. The weight of authority holds that one who, while engaged in a *lawful* act, accidentally injures the person of another is not liable in trespass unless he was negligent. *Morris* v. *Platt,* 32 Conn. 75; *Vincent* v. *Stinehour,* 7 Vt. 69; *Brown* v. *Kendall,* 6 Cush. (Mass.) 292. Contra: *Sullivan* v. *Dunham,* 161 N. Y. 290; 3 N. Y. Ann. Cas. 324, 328; *Rafferty* v. *Davis,* (1918) 260 Pa. 563. After considerable controversy, the law of England was settled in accord with the weight of authority in this country. *Stanley* v. *Powell,* (1891) 1 Q. B. 86; 5 HARV. L. REV. 36. Where the defendant's act was *unlawful,* it is held that he is liable in trespass for injuries inflicted directly by forces set in motion by him, although he had no intent to do the specific act which caused the injury, and even in the absence of negligence, *Williams* v. *Townsend,* 15 Kans. 563; *Murphy* v. *Wilson,* 44 Mo. 313; even though plaintiff acquiesced in defendant's violation of the law, *Evans* v. *Waite,* 83 Wis. 286; and even where it seemed probable that the plaintiff's own act was the proximate cause of his injury, *Horton* v. *Wylie,* 115 Wis. 505. It has been noted above that where both plaintiff and defendant were engaged in an unlawful act, the plaintiff's right to recover in an action on the case is usually held to be the same as if neither had been unlawfully engaged. The right to recover in trespass in such a case has been denied in *Gilmore* v. *Fuiler,* 198 Ill. 130; *Vernon* v. *Bankston,* 28 La. Ann. 710; *Aldrich* v. *Harvey,* 50 Vt. 162. But a recovery has been allowed, as in the principal case, even where the plaintiff invited the defendant to enter into the unlawful engagement, on the theory that consent to an assault and battery is of no effect. *Stout* v. *Wren,* 8 N. C. 420; *Shay* v. *Thompson,* 59 Wis. 540; *Morris* v. *Miller,* 83 Nebr. 218. *Contra*: *Galbraith* v. *Fleming,* 60 Mich. 403. But this theory is not adhered to in cases holding that a woman can not recover damages for her own seduction if she consented, regardless of the unlawfulness of fornication. *Paul* v. *Frazier,* 3 Mass. 71; *Welsund* v. *Schueller,* 98 Minn. 475. While it would seem at first blush contrary to certain general principles of remedial justice to allow a plaintiff to recover where he and the defendant were in equal fault (and thus was the law stated by Lord Mansfield in *Holman* v. *Johnson,* (1775) Cowp. 341) today the majority of courts allow a recovery. The apparent anomaly rests on the importance which the law attaches to the safety of life and person.

VENDOR AND PURCHASER—MORTGAGES—NO CONSTRUCTIVE NOTICE OF RECITALS OF UNRECORDED DEED.—D held a real property mortgage which was not recorded. Later, P took a mortgage on same land from the grantee of D's mortgagor. In said grantee's deed (which was not recorded) was a recital of the mortgage to D. P sued to foreclose. D claims a priority. *Held*: The recitals in the deed gave P no constructive notice, because it was not recorded. *Ebling Brewing Co.* v. *Gennaro et al,* (1919) 179 N. Y. Supp. 384.

In *Baker* v. *Mather,* 25 Mich. 51, it was held that a mortgagee took subject to a prior unrecorded mortgage which was expressly referred to in the deed to the mortgagor of the subsequent mortgage. The principal case held

contra. Statements by numerous text writers that "a purchaser is affected with notice of recitals in conveyances forming his chain of title and material thereto, whether recorded or not" are not well supported by the authorities cited therefor. 1 JONES, MORTGAGES (7th ed.) sec. 574; 39 CYC. 1715. The cases cited are cases where the instrument containing the recital was recorded. See *Hancock* v. *McAvoy,* 151 Pa. 439; *White* v. *Foster,* 102 Mass. 375. But *Baker* v. *Mather, supra,* sustains such a broad statement and possibly *Stidham* v. *Mathews,* 29 Ark. 650. It is clear that the recital of a mortgage in a *recorded* deed charges that grantee and subsequent mortgagee under him with notice of such mortgage, although it (the prior mortgage) is unrecorded. *Taylor* v. *Mitchell,* 58 Kans. 194; *Sweet* v. *Henry,* 175 N. Y. 268. The ultimate question in the principal case is, therefore, whether or not a mortgagee or grantee is charged with notice of recitals in *unrecorded* instruments in the chain of title. Cases answering in the affirmative thereby impose upon every purchaser or mortgagee of land the duty of employing a lawyer or title company to examine the title and if a deed in the chain of title be missing, require its production. It seems that the principal case is more in harmony with the true spirit of the recording laws in holding that the grantee or mortgagee is to be charged with constructive notice of only those instruments in his chain of title which were on record at the time he took his deed or mortgage. As suggested by the court in the principal case, the contrary view is reasonable in England where the title deeds are passed on to each successive grantee and where it is held, as a result, that the grantee has constructive notice of the contents of all the title deeds in the chain. Berwick v. Price, [1905] 1 Ch. 632. But under our system of conveyancing, says the court, the reason for such a rule does not exist.

WATERS AND WATERCOURSES—POLLUTION OF—SUIT BY NONRIPARIAN USER —An incorporated city was authorized by law to take water from a stream for distribution among its inhabitants. One of the consumers sued an upstream riparian owner for damages resulting from alleged pollution of the water. *Held,* assuming the defendant owed a duty to the city as a lower riparian owner, the plaintiff failed to state a cause of action, as he was not such an owner nor was there privity of contract between him and defendant, nor does it appear that the defendant as a riparian owner owed a general duty to the public. *Egyptian Lacquer Mfg. Co.* v. *Chemical Co. of America,* (N. J., 1919) 108 Atl. 249.

In *Baum* v. *Somerville Water Co.,* 84 N. J. Law 611, 46 L. R. A. (N.S.) 966, it was held the agreement of a water company to furnish water to a municipality which the latter delivered to the plaintiff did not impose on the company a duty to the public to furnish water at all times under a sufficient pressure to extinguish fires. This case is in accord with the weight of authority; however there are a few cases holding that water companies owe a direct duty to property owners and are liable either in tort or as third party beneficiaries. See *Mugge* v. *Tampa Waterworks Co.,* 6 L. R. A. (N. S.) 1171, 42 So. 81. *Fisher* v. *Greensboro Water Supply Co.,* 128 N. C. 375; *Guardian*